

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
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Via Electronic Mail & First Class Mail

September 10, 2012

Judy Harvey, Attorney
U.S. Department of Justice
Environment and Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Re: *Northern California River Watch and West Valley Sanitation District*
Settlement Agreement and Mutual Release of Claims

Dear Attorney Harvey:

In compliance with 33 U.S.C. § 1365(c)(3), we enclose for review by the Department of Justice a copy of the Settlement Agreement and Mutual Release of Claims entered into by Northern California River Watch and West Valley Sanitation District.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jerry Bernhaut". The signature is written in a cursive, flowing style.

Jerry Bernhaut

JB:lhm

Enclosure

cc: Sarah Olinger, Esq.
Kenton L. Alm, Esq.
MEYERS NAVE

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (this “Agreement”) is entered into between Northern California River Watch, a non-profit corporation, on behalf of itself and its members (“River Watch”) and West Valley Sanitation District, a sewer district organized under the laws of the State of California (the “District”), (collectively the “Parties”) as of the last date executed below (the “Effective Date,”) with respect to the following facts and objectives.

RECITALS

The District provides sanitary sewer collection and disposal services to the cities of Campbell, Monte Sereno, a portion of Saratoga, the Town of Los Gatos, and the intervening unincorporated areas of Santa Clara County. The District serves approximately 112,000 residents within a service area encompassing 28 square miles. The District’s sanitary sewer collection system is comprised of approximately 415 miles of sewer main and 200 miles of sewer laterals, for a total of about 615 miles of sewer lines. The District’s sewer mains range in diameter from 3 to 39 inches, with nearly 90% of these lines being 8-inches in diameter or smaller.

The District operates its sanitary sewer collection system in compliance with the Federal Water Pollution Control Act (“Clean Water Act”) [33 U.S.C. § 1251 et seq.], the Federal Resource Conservation and Recovery Act (“RCRA”) [42 U.S.C. § 6901 et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code § 13000 et seq.]. The District is enrolled under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (“WDR”), [State Water Resources Control Board Order No. 2006-003-DWQ].

On March 1, 2012, River Watch provided the District with a Notice of Violations and Intent to File Suit under Section 505 of the Clean Water Act, [33 U.S.C. § 1365] with regard to alleged violations of the Clean Water Act associated with the District’s operation of its wastewater collection system, a copy of which is attached to this Agreement as Exhibit A.

Also on March 1, 2012, River Watch provided the District with a Notice of Violations and Intent to File Suit under Section 6972 of RCRA, [42 U.S.C. § 6972(c)], with regard to alleged violations of the RCRA associated with the District’s operation of its wastewater collection system, a copy of which is attached to this Agreement as Exhibit B. These two Notices of Violations are referred to collectively hereafter as the “Notices”.

On May 23, 2012, counsel for the Parties and District staff met to discuss the allegations and claims set forth in the Notices. The Parties, through counsel, engaged in negotiations following that meeting, which subsequently led to a resolution of all claims and disputes made by River Watch as set forth in the Notices.

Without either adjudication of River Watch's claims, as set forth in the Notices, or admission by the District of any alleged violation or other wrongdoing, the Parties agree that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving the claims that were, or could have been, asserted based upon the Notices.

In mutual consideration for the resolution of these claims and possible claims, the Parties agree to the following:

TERMS OF SETTLEMENT

I. DEFINITIONS

- A. Category I Spill: A discharge of sewage that is defined in Section A(1) of the State Water Resources Control Board's Monitoring and Reporting Program No. 2006-0003-DWQ Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.
- B. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of the Sanitary Sewer Collection System. Inspection is based on closed circuit television (CCTV) inspections for gravity mains; manhole inspections for structural defects; and, inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.
- C. Eight Year Cycle: A Condition Assessment of the entire sewer system that requires each sewer line to be CCTV'd every eight years, but does not require all sewer lines to be on the same CCTV schedule. Accordingly, each sewer line will be on its own cycle, where such CCTV will occur at least every eight years or more frequently, if necessary.

- D. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the Sanitary Sewer Collection System located within two hundred and fifty (250) feet of surface waters, which are identified on the map attached hereto as Exhibit A.
- E. Sanitary Sewer Collection System: Any public system of pipes, pump stations, main sewer lines, or other conveyances located within the District's boundary used to collect and convey wastewater to the San Jose/Santa Clara Water Pollution Control Plant. For the purposes of this Agreement, the Sanitary Sewer Collection System consists of gravity mains, force mains, and pump stations, and does not include laterals or other private conveyances.
- F. Significantly Defective: A sewer pipe is considered to be Significantly Defective if the pipe's condition receives a grade of 4 or 5 based on the PACP rating system. PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:
- 5 – Most significant defect
 - 4 – Significant defect
 - 3 – Moderate defect
 - 2 – Minor to moderate defect
 - 1 – Minor defect

II. REMEDIAL MEASURES

A. SEWER SYSTEM INVESTIGATION AND REPAIR

1. Within two (2) years from the Effective Date of this Agreement, the District shall identify the sewer lines located within two hundred and fifty (250) feet from surface waters that have been CCTV'd within ten (10) years prior to the Effective Date of this Agreement, and determine if any such lines contain one or more structural defects rated as Significantly Defective.

a. Except as provided below in Section II.A.1.b, within two (2) years from the Effective Date of this Agreement, the District shall either spot repair or perform required correction of all structural defects rated Significantly Defective above, or replace the sewer line.

b. If a sewer line is scheduled to be replaced within four (4) years from the Effective Date of this Agreement as part of the District's Capital Improvement

Program, then the District shall not be required to perform the tasks set forth above in Section II.A.I.a. on said sewer line.

2. Within two (2) years from the Effective Date of this Agreement, the District shall complete a Surface Water Condition Assessment of all sewer lines which have not been CCTV'd within ten (10) years prior to the Effective Date of this Agreement.
3. Within two (2) years after completion of the Surface Water Condition Assessment under section A.2. above, the District shall either spot repair or perform required correction of all defects rated Significantly Defective, or replace the sewer lines.
4. Beginning no more than two (2) years from the Effective Date of this Agreement, the District shall implement a system to provide for the Condition Assessment, by CCTV inspection, of its Sanitary Sewer Collection System on an EightYear Cycle. The District shall notify River Watch when all sewer lines have been CCTV'd within the past eight years.
5. When a Condition Assessment determines that a defect in a sewer line is Significantly Defective, the District shall give the highest priority to the spot repair, correction, or replacement of such defects and/or sewer lines located within two hundred fifty (250) feet of surface waters, which are identified on the map attached hereto as Exhibit A.

B. SEWER SYSTEM OVERFLOW RESPONSE

1. Within one (1) year from the Effective Date of this Agreement, the District shall modify its Backup and Sanitary Sewer Overflow (SSO) response plan to require the following additional information used to estimate spill volume:
 - a. The method or calculations used for estimating total spill volume, spill volume reaching surface waters, and spill volume recovered.
 - b. For Category I Spills, a listing of nearby residents or business operators contacted to attempt to establish the SSO's start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that that brackets a given time that the SSO began.
 - c. Photographs of the manhole flow at the SSO site based on the District's own photographic volume estimation guide; or, other photographic evidence that

may aid in establishing the spill volume.

2. Within one (1) year of the Effective Date of this Agreement, the District shall require water quality sampling and testing whenever it is estimated that an SSO of fifty (50) gallons or more enters surface waters, and if field crews can safely access the affected surface waters. The District shall collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. Constituents tested for shall include Ammonia, Total Coliform, and E. coli.
3. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the District shall determine and address the cause of the SSO that enters surface waters, and shall employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (c) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the non-structural defect.
4. During the first two years of this Agreement, the District shall collect samples for River Watch to conduct a CAM-17 toxic metals analysis for Category I Spills that reach surface waters. In addition to providing samples from the receiving water, the District will also provide River Watch a sample of the sewage from the SSO, if it can be obtained.

C. SUPPLEMENTAL ENVIRONMENTAL PROJECT:
CLEANOUT INSTALLATION AND PRIVATE LATERAL
REPLACEMENT FUND PROGRAM

1. Within one (1) year of the Effective Date of this Agreement, the District shall set up a revolving loan program to provide partial loans for the replacement or repair of private sewer laterals, including installation of property line cleanouts ("loan program").
 - a. The District shall invest Fifty-Five Thousand Dollars (\$55,000.00) into the loan program.
 - b. The loan program shall provide a low interest loan to eligible property owners in an amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00) for each eligible private sewer lateral requiring repair or replacement, and/or property line cleanout installation.

i. A property owner is considered eligible for the loan program if the District determines that the private sewer lateral is failing, and/or that the property does not have a property line cleanout, and the repair or replacement and/or installation can be completed within one hundred twenty (120) days of the application for the loan program.

c. The District shall set the interest rate, financing term, financing amount, and terms of repayment for the loan program.

2. The District shall publicize, advertise, and otherwise promote the loan program to property owners within its service area and shall set forth procedures for eligible property owners to apply for the loan program.

D. TASK CONFIRMATION

1. By April 5 of each year, after the District files its SSO Annual Report and SSMP Annual Audit Report with the San Francisco Bay Regional Water Quality Control Board, the District shall provide a copy of these reports to River Watch, accompanied by a letter which details the District's yearly progress towards completion of tasks described in Sections II. A, B, and C above. The District shall submit both reports and progress letter to River Watch either electronically or by First Class Mail.

2. Completion of all tasks described in Sections II. A, B, and C above and herein shall constitute completion of all obligations set forth in this Agreement, and the District shall cease providing annual copies of its reports and progress letter to River Watch. Section II.A.4 will be considered a completed task when the District has notified River Watch that the first Eight Year Cycle is completed.

III. ATTORNEYS' FEES, COSTS AND EXPENSES

Within fifteen (15) days after the Effective Date of this Agreement, the District shall pay River Watch the sum of Fifty Thousand Dollars (\$50,000.00) as reimbursement for River Watch's investigative and attorneys' fees and costs. Payment shall be made by the District to River Watch in the form of a single check payable to "Northern California River Watch" and shall constitute full and complete satisfaction of any and all claims by River Watch for attorneys' fees and costs in connection with this matter up to and including the Effective Date of the Agreement, and for attorneys' fees and costs incurred for monitoring and enforcing the District's compliance with the Agreement, with the exception of any action taken to enforce this Agreement by way of arbitration.

IV. RELEASE OF CLAIMS

A. Except for obligations arising under this Agreement, and except for the attorneys' fees and costs set forth in Section III above, upon the Effective Date of this Agreement, River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter, agrees that it releases, acquits and forever discharges the District, its elected and appointed officials, officers, employees, agents, attorneys, legal successors and assigns, and any other person acting on the District's behalf, from all environmental claims, actions, causes of action, obligations, liabilities, indebtedness, breach of duty, claims for injunctive relief and other equitable relief, suits, liens, damages, losses, costs or expenses, including attorneys' fees, known or unknown, fixed or contingent, liquidated or unliquidated, suspected or unsuspected, foreseen or unforeseen, based upon the violations alleged, or which could have been alleged, in the Notices, including without limitation, any and all claims for violations of the Clean Water Act (33 U.S.C. § 1251 *et seq.*) or RCRA (42 U.S.C. § 6901 *et seq.*) which occurred at any time up to and including the entire term of this Agreement.

A request for dismissal with prejudice will only be filed after the United States has either completed its review of this Agreement or the 45-day review period has expired, whichever occurs first.

B. The foregoing release is intended to extend to all Clean Water Act and RCRA claims, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

C. The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

V. COVENANT NOT TO SUE

A. For the duration of this Agreement, River Watch agrees that neither River Watch, its officers, executive staff, members of its governing board, nor any organization under the control of River Watch, its officers, executive staff, members of its governing board, will serve any Notice of Violations and Intent to Sue or file any lawsuit against the District seeking relief for alleged violations of the Clean Water Act (33 U.S.C. § 1251 *et seq.*), or RCRA (42 U.S.C. § 6901 *et seq.*), or any similar state statutes and/or regulations, including the Porter Cologne Water Quality Control Act (Cal. Water Code, § 13000 *et seq.*), nor will River Watch initiate or support such lawsuits against the District brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions.

B. For the duration of this Agreement, River Watch agrees to submit any claims against the District seeking relief for alleged violations of the Clean Water Act or RCRA, or any similar state statutes and/or regulations, for resolution under the dispute resolution process set forth in Section VII.

VI. FORCE MAJEURE

A. Separate from, and in addition to any other limitations on the District's obligations under this Agreement, the District's obligation to comply with one or more of the provisions of this Agreement shall be deferred to the extent and for the duration that the delay in compliance is caused by an event or circumstances beyond the reasonable control of the District or any entity controlled by the District, including its contractors, and, that could not have been reasonably foreseen and prevented by the exercise of due diligence by the District. Delays solely caused by unanticipated or increased costs or expenses associated with the completion of any work or activity under this Agreement, changed financial circumstances, or the District's failure to make timely and bona fide applications and to exercise diligent efforts to obtain permits, or normal inclement weather shall not, in any event, be considered to be circumstances beyond the District's control.

B. If any event or circumstance occurs that causes or may cause a delay in the District's compliance with any provision of this Agreement, and the District seeks relief under this section:

1. The District shall provide written notice to River Watch within thirty (30) days of the date that the District first knew of the event or circumstance, or should have known of the event or circumstance by the exercise of due diligence;

2. The District's notice to River Watch shall specifically refer to this section of this Agreement and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the District to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The District shall adopt all reasonable measures to avoid and minimize such delays;

3. If River Watch disagrees with the District's notice, the Parties shall meet and confer in good faith to determine whether the Parties concur that the delay was or is impossible to avoid, despite the good faith efforts of the District.

VII. ENFORCEMENT AND DISPUTE RESOLUTION

A. The Parties covenant and agree that, if either party determines the other is in violation of one or more terms of this Agreement, the party shall provide notice to the other in writing of what actions or inactions are deemed to be in violation of this Agreement. Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to the notice in writing. If the Parties still dispute compliance with this Agreement, within an additional sixty (60) days, the Parties will meet and confer in a good faith attempt to informally resolve their dispute. If the Parties cannot informally resolve the dispute, they shall first attempt to resolve such dispute through non-binding mediation, using a mutually agreed upon mediator for resolution. Should the non-binding mediation be unsuccessful, then the Parties will enter into binding arbitration, conducted by an arbitrator agreed to by the Parties. Either party may request that the presiding Judge of the Santa Clara County Superior Court select an arbitrator if the Parties cannot reach agreement. The arbitration shall be binding and not subject to appeal. The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS/Endispute or other conventional rules agreed to by the Parties. The arbitrator shall be empowered to determine a prevailing party and award payment of reasonable attorneys' fees and costs to that party. To the extent there are multiple issues with a different prevailing party for one or more issues, the arbitrator may take those facts into account in terms of an award for fees and costs. The non-prevailing party shall also bear the costs of the arbitrator's fees. Otherwise, River Watch and the District shall each bear their own costs and attorney's fees incurred in connection with such mediation or arbitration.

B. The Parties agree that the processes of mediation and arbitration must advance as quickly as possible.

C. If River Watch asserts the District is in violation of this Agreement, and the

District corrects the action or inaction within sixty (60) days of notice from River Watch, no further enforcement action under the terms of this Agreement shall be taken by either party.

VIII. TERMINATION DATE

Notwithstanding anything to the contrary set forth herein, this Agreement shall terminate ten (10) years after the Effective Date of this Agreement, or upon completion of all tasks set forth in this Agreement and described in Section II.D.2, whichever occurs sooner.

IX. GENERAL PROVISIONS

A. Notices

Unless otherwise provided herein or until the Parties otherwise agree in writing, all communications and notice between the Parties regarding this Agreement shall be made through the following addresses:

For the District:

Jon Newby, District Manager and Engineer
West Valley Sanitation District
100 East Sunnyside Avenue
Campbell, CA 95008

With Copy to:

Kenton Alm, Attorney at Law
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Tel. 510-808-2000
Email: kalm@meyersnave.com

For River Watch:

Northern California River Watch
Attn: Larry J. Hanson, Program Director
P.O. Box 817
Sebastopol, CA 95472

With a Copy to:

Jerry Bernhaut, Attorney at Law
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. (707) 528-8175
Email: lhm28843@sbcglobal.net
Email: j2bernhaut@yahoo.com

B. Entire Agreement

This Agreement constitutes the entire agreement between the Parties. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character. This Agreement shall supersede all previous agreements whether written or oral, that may have been reached between the Parties in connection with this matter and provides the sole remedy from any party to any other party regarding this matter.

C. Advice of Attorneys

This Agreement is entered into by each party freely and voluntarily. Each party has had the benefit of advice of counsel of its choice in the negotiating, drafting and executing of this Agreement, and the language in all parts of this Agreement is the product of the efforts of all counsel. Accordingly, neither the entire Agreement nor any provision in it shall be deemed to have been proposed or drafted by a party or construed against any party.

D. Governing Law/Construction of Agreement

This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California applicable to agreements executed and wholly performed within said State without regard to principles of conflicts of laws. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but rather, this Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

E. Authority of Representation

Each party respectively represents and warrants to each other party that the undersigned representative for such party has full and complete authority to execute this Agreement and bind said party to the terms hereof.

F. Counterparts/Electronic and/or Facsimile Signatures

This Agreement may be executed in counterparts with each counterpart being interpreted as an original, and all of which, taken together shall constitute one and the same instrument. Any party may transmit its execution of this Agreement by facsimile or electronic mail, in which case such party shall provide the original execution page within three (3) business days to all other Parties. A party's execution page transmitted by facsimile or electronic mail may be used as though it were an original signature notwithstanding the fact that the party did not provide an original signature.

G. No Admission of Liability or Waiver

The Parties expressly recognize that the terms and conditions of this Agreement constitute a compromise and settlement of disputed claims and an accord and satisfaction of contested matters. This Agreement shall not be construed in any manner as an admission by any party hereto of any liability of any kind to the other party, nor shall it be considered or interpreted as an assumption of any liability under applicable law. This Agreement is executed by the Parties for the sole purpose of settling the disputes which serve as the basis for River Watch's claims. It is expressly understood and agreed, as a condition hereof, that this Agreement is not to be construed as, nor does it constitute, an admission, evidence, or indication, in any degree, of liability by any party for any claim, asserted or un-asserted.

H. No Third Party Beneficiaries

This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever.

SO AGREED:

Dated:

NORTHERN CALIFORNIA RIVER WATCH

By: _____

Margaret Bacigalupi, Board President

Dated:

WEST VALLEY SANITATION DISTRICT

By: _____

Jon Newby, District Manager and Engineer

APPROVED AS TO FORM:

Date:

8-21-12



Jerry Bernhaut

Attorney for Northern California River Watch

Date:

Kenton Alm

Attorney for West Valley Sanitation District

SO AGREED:

Dated: 8-26-12
NORTHERN CALIFORNIA RIVER WATCH

By: Margaret Bacigalupi Board President
Margaret Bacigalupi, Board President

Dated:
WEST VALLEY SANITATION DISTRICT

By: Jon Newby
Jon Newby, District Manager and Engineer

APPROVED AS TO FORM:

Date:

Jerry Bernhaut
Attorney for Northern California River Watch

Date: 8-29-12

Kenton Alm
Attorney for West Valley Sanitation District

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED***

March 1, 2012

Robert R. Reid, General Manager/Head of Operations
West Valley Sanitation District
100 East Sunnyside Avenue
Campbell, CA 95008

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Reid:

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

This letter is written on behalf of Northern California River Watch ("River Watch") which hereby places West Valley Sanitation District ("the Discharger") on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Water Control Plan ("Basin Plan,") as exemplified by the incidents of non-compliance identified and outlined below.

INTRODUCTION

The CWA prohibits any discharge of pollutants from a point source to waters of the United States except as authorized under a National Pollutant Discharge Elimination System ("NPDES") permit, issued pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C.

§ 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement, River Watch has identified discharges of raw sewage from the Discharger's collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives in this Notice describing the discharges of raw sewage to surface waters as the activities leading to violations and describing below with particularity specific incidents referenced in the State Water Resources Control Board's California Integrated Water Quality System ("CIWQS") SSO Public Reports as well as other public documents in the Discharger's possession or otherwise available to the Discharger, and incorporates by reference records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the violations alleged in this Notice is the West Valley Sanitation District and those of its employees responsible for compliance with the CWA.

4. *The location of the alleged violation(s).*

The location or locations of the various violations are identified in records created and/or maintained by or for the Discharger which relate to the Discharger's sewage collection system as further described in this NOTICE.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined both RWQCB records and the Discharger's records for the period from February 27, 2007 through February 27, 2012. The range of dates covered by this Notice is therefore from February 27, 2007 through February 27, 2012. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered herein. Some of the violations are continuous, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is Northern California River Watch, a non-profit corporation, organized under the laws of the State of California and located at P.O. Box 817, Sebastopol, CA 95472, telephone 707-824-4372. Northern California River Watch is dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

BACKGROUND HISTORY AND OPERATIONS OF THE DISCHARGER

The Discharger provides wastewater collection and disposal services to residential, commercial and industrial customers in the cities of Campbell and Monte Sereno, a portion of Saratoga, the Town of Los Gatos, and the intervening unincorporated areas of Santa Clara County. The Discharger serves approximately 112,000 residents, encompassing a service area of 28 square miles. The wastewater collection system is comprised of approximately 415 miles of sewer main and 200 miles of sewer laterals, for a total of about 615 miles of sewer lines. The Discharger's sewer mains range in diameter from 3 to 39 inches, with nearly 90% of these lines being 8-inches in diameter or smaller. Almost all of the sewer laterals are 4-inches in diameter. The Discharger's oldest sewer lines are approximately 90 years old. The Discharger has ownership and maintenance responsibilities for the lower sewer laterals running from the main line connection to the property line cleanout. Wastewater collected within the Discharger's district flows to the City of San Jose's facilities for treatment and disposal.

The hydraulic model developed by RMC Water and Environment ("RMC,") as part of a Capacity Assessment Study performed under contract to the Discharger, determined the Discharger's entire collection system to be capable of handling the existing Peak Dry Weather Flow, however, some portions of the system were hydraulically deficient under

more intensive flow conditions produced by existing and future Peak Wet Weather Flows. A total of 20 hydraulic deficiencies were found in various areas of the system. (SSMP Section VIII-CAPACITY MANAGEMENT).

The Discharger has a history of Sewer System Overflows (“SSOs”) from its ageing sewer lines. The largest SSO event reported in 2010 consisted of 2,500 gallons and, according to the Annual Report of SSOs for 2010, “is suspected of being caused by a combination of high inflow and infiltration and a deficiency in the system’s hydraulic capacity.” (Annual report p.2) These evaluations of the Discharger’s collection system are evidence of structural defects which allow inflow and infiltration (“I/I”) of rainwater and groundwater into the sewer lines, resulting in a build-up of pressure which causes SSOs. As recorded in the California Integrated Water Quality System (“CIWQS”) Interactive SSO Reports, the Discharger’s collection system has experienced 166 SSOs with a combined volume of 46,293 gallons between May 2007 and February 2012; 16,240 gallons reaching surface waters. Approximately 79 of these SSOs were from the Discharger’s main lines. For example, on January 20, 2010, an SSO of reported volume of 2,500 gallons occurred at Quito Road in Los Gatos, with 1,500 gallons reportedly reaching surface waters. On May 16, 2010 an SSO of reported volume of 1,200 gallons occurred at Bayview Road in Los Gatos, with 400 gallons reportedly reaching surface waters. SSOs caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Los Gatos Creek, Dry Creek and South San Francisco Bay, all waters of the United States.

In addition to surface overflows which discharge overland into surface waters, underground leakages (“exfiltration”) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground, hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, have verified the contamination of the adjacent waters with untreated sewage.¹ River Watch alleges that such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in the Discharger’s collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The Discharger’s chronic collection system failures pose a substantial threat to public health.

River Watch also alleges that the Discharger regularly underestimates the duration of its SSOs, thereby underestimating and inaccurately reporting the volume of SSOs and the volume which reaches gutters, canals and storm drains which are connected to adjacent surface waters. The Discharger’s Sewer Overflow Response Guide, under ESTIMATE SPILL VOLUME, provides the following directions: “Calculate the volume based on 15-minutes prior to the time the WWSO was notified of the spill.” There is no reason to believe that the great majority of SSOs are reported to the Discharger within 15 minutes of their start

¹
See Report of the Human Marker Study issued in July, 2008 and conducted by water quality expert Dr. Michael L. Johnson, U.C. Davis performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

time. Spills occur in out of the way, not readily visible areas, at nighttime. Using this unwarranted assumption as a basis for estimating volume is clearly calculated to err on the side of underestimating spill volume.

Any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Therefore, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA.

In addition, the Basin Plan adopted by the RWQCB contains discharge prohibitions which apply to the discharge of untreated or partially treated wastewater. The discharges described herein constitute a nuisance and are either: injurious to health or indecent or offensive to the senses; an obstruction to the free use of property; and/or occur during, or as a result of, the transportation, disposal or treatment of wastes. The Discharger's collection system operations are not regulated under a NPDES Permit, but are currently regulated under the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-003-DWQ ("Statewide WDR"), adopted on May 2, 2006.

The Discharger's illegal discharge of untreated wastewater is a significant contribution to the degradation of the South San Francisco Bay, and tributary waters, such as Los Gatos Creek, with serious adverse effects on beneficial uses. River Watch members residing in the area have a vital interest in bringing the Discharger's operation of its collection system into compliance with the CWA.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with the CWA and the Basin Plan, and to prioritize remedial measures to reflect the biological impacts of the Discharger's ongoing non-compliance:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:
 - a. Amendment of the Risk Prioritization Matrix in the Discharger's Sewage System Management Plan ("SSMP") to specify that defective sewer lines located within 150 feet of surface waters, **including gutters, canals and storm drains which are connected to adjacent surface waters**, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more 150 feet of surface waters as defined above, taking other factors in the Matrix into consideration;
 - b. Amendment of the Risk Prioritization Matrix in the Discharger's SSMP to give residential areas a "moderate" rather than "low" rating in the Impacts to Community element; and,

- c. The provision of funding in the Discharger's Capital Improvements Plan (CIP) to CCTV all lower sewer laterals every 10 years, except for lines CCTV'd within the prior 10 years and lines constructed, replaced or repaired within the prior 20 years.
- 2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
 - a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer;
 - b. The occurrence of 2 or more SSOs caused by the private sewer lateral within (2 years;
 - c. A change of the use of the structure served (1) from residential to non-residential uses (2) to a non- residential use that will result in a higher flow than the current non- residential use, and (3) non- residential uses where the structure served has been vacant/unoccupied for more than 3 years;
 - d. Upon replacement or repair of any part of the sewer lateral;
 - e. Upon issuance of a building permit with a valuation of \$25,000.00 or more; and,
 - f. Upon significant repair or replacement of the main sewer line or lower lateral to which the lateral is attached.
- 3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to State waters, including a more detailed account of SSOs and remedial actions, with sufficient information to verify and document SSO start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions including whether any chemical agents were used.
- 4. Creation of web site capacity to track information regarding sewer system overflows. In the alternative, a link from the Discharger's web site to the State Water Resources Control Board's CIWQS SSO Public Reports. Provision of notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.
- 5. Performance of human marker sampling on creeks, rivers, or wetlands adjacent to sewer lines to test for sewage contamination from underground exfiltration.

VIOLATIONS

River Watch alleges that from February 27, 2007 through February 27, 2012 the Discharger has violated the CWA, the Basin Plan and the Code of Federal Regulations, by reason of discharging pollutants to waters of the United States from its collection systems without a NPDES permit. The below-listed violations are reported by State Water Resources Control Board staff, and evidenced by the CIWQS SSO Reporting Program Database records. River Watch further alleges that these violations are continuing.

Violations

Description

1800

Collection system overflows caused by underground exfiltration. This is an event in which untreated sewage is discharged from the collection system prior to reaching the treatment plant. Underground discharges are alleged to have been continuous throughout the 5 year period from February 27, 2007 through February 27, 2012. Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the San Jose treatment plant reported in the Discharger's records, video inspection of the collection system, and testing of waterways adjacent to sewer lines, creeks, or wetlands for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.

200

SSOs, as evidenced in the CIWQS Interactive SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

CONTACT INFORMATION

River Watch has retained legal counsel with respect to the violations alleged and issues set forth in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
Jerry Bernhaut, Esquire
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675

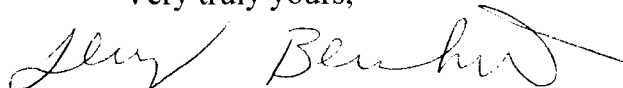
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities and watersheds. Said members use the affected watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature

walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations identified in this Notice. During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations alleged. If the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested that discussions be initiated soon so that they may be completed before the end of the 60-day notice period.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jerry Bernhaut".

Jerry Bernhaut

JB:lhbm

cc:

Northern California River Watch
P.O. Box 817
Sebastopol, CA 95472

Board of Directors
West Valley Sanitation District
100 East Sunnyside Avenue
Campbell, CA 95008

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-100

EXHIBIT B

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



VIA REGISTERED MAIL

March 1, 2012

Robert R. Reid, General Manager/Head of Operations
West Valley Sanitation District
100 East Sunnyoaks Avenue
Campbell, CA 95008

***Re: Notice of Violations and Intent to File Suit under the Resource
Conservation and Recovery Act***

Dear Mr. Reid:

NOTICE

On behalf of Northern California River Watch and its members ("River Watch") I am providing statutory notification to the West Valley Sanitation District ("the District") of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6901 *et seq.*, by reason of the District's operation of its sewage collection system described in this Notice.

The RCRA requires that 60 days prior to the initiation of an action for violation of permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the Environmental Protection Agency ("EPA") and the State in which the violation is alleged to have occurred (see also 40 CFR §§ 254.2 and 254.3). However, such an action may be brought immediately after such notification when a violation of Subtitle C of the RCRA is alleged (sub-chapter 111, 42 U.S.C. § 6921 *et seq.*). Certain violations of California Title 22 may also be violations of RCRA Subtitle C.

The RCRA also requires that a private party provide 90 days prior notice to the alleged violator, the Administrator of the EPA and the State in which the violation is alleged to have occurred before initiating an action which alleges violations resulting in imminent and substantial endangerment to human health or the environment. However, such an action may be brought immediately after such notification when a violation of Subtitle C of the RCRA is alleged (sub-chapter 111, 42 U.S.C. § 6921 *et seq.*)

Sub-Chapter C of the RCRA requires hazardous waste to be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in a manner which may create a danger to human health or to the environment.

As discussed in this Notice, the District is routinely violating the RCRA's regulatory mandates applicable to hazardous or solid wastes by causing untreated sewage, a hazardous waste under the RCRA, to be discharged or deposited where it is or probably or will be discharged into waters of the State, thereby creating or threatening to create, conditions of pollution or nuisance. (42 U.S.C. § 6972(a)(1)(A)). The District is routinely violating the RCRA's prohibition against creating an imminent and substantial endangerment to human health and the environment by the operation of its sewage collection system which has caused contamination of soil, groundwater and surface water with fecal coliform and other pathogens, (42 U.S.C. § 6972(a)(1)(B)).

The District's mishandling of wastes in violation of Sub-Chapter C of the RCRA has created and is creating an imminent and substantial endangerment to human health or the environment. River Watch alleges violations of Sub-Chapter C with regard to both a violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA (including California Title 22), as well as violations creating imminent and substantial endangerment to human health or the environment.

River Watch hereby notifies the District that at the expiration of the appropriate notice periods under the RCRA, River Watch intends to commence a civil action against the District on the following grounds:

1. The District has been and continues to operate a sewage collection system with ageing, structurally defective sewer lines which experience sewer system surface overflows ("SSO") and underground exfiltration causing contamination of groundwater and surface waters. The District's failure to adequately maintain its sewage collection system has violated and continues to violate a permit, standard, regulation, condition, requirement, or order which has become effective under the RCRA (42 U.S.C. § 6972(a)(1)(A)).
2. The District's failure to adequately maintain its sewage collection system and resultant discharges of untreated sewage to soil, groundwater and surface water have created and continue to create an imminent and substantial endangerment to human health or the environment (42 U.S.C. § 6972(a)(1)(B)).
3. The District's failure to adequately maintain its sewage collection system and resultant discharges of untreated sewage to soil, groundwater and surface water has violated and continues to violate Subtitle C of RCRA (sub-chapter 111, 42 U.S.C. § 6921 *et seq.*).

Under 42 U.S.C. § 6972(a)(1)(A), notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under the RCRA, shall include sufficient information to permit the recipient to identify the specific permit, standard, regulation, condition, requirement, or order which has allegedly been

violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice. River Watch therefore provides the following information:

1. *The specific standard, limitation, or order alleged to have been violated.*

The RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. Its goals are: to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes. RCRA § 3005, 42 U.S.C. § 6925, requires facilities to obtain permits for the handling, storage, treatment, transportation and/or disposal of hazardous waste. RCRA § 3004, 42 U.S.C. § 6924, requires owners and operators of hazardous waste treatment, storage, and disposal facilities to follow particular standards. These requirements are enumerated in 40 C.F.R. Part 264 and include requirements for General Facility Standards (Subpart B), Preparedness and Prevention (Subpart C), Contingency Plans and Emergency Procedures (Subpart D), Releases from Solid Waste Management Units (Subpart F), Closure and Post-Closure (Subpart G), Financial Requirements (Subpart H),

Waste management regulations mandated by the EPA are codified at 40 C.F.R. §§ 239-282. Regulations regarding management of hazardous waste begin at 40 C.F.R. § 260. Pursuant to the RCRA, the State of California has enacted laws and promulgated regulations which are at least as stringent as the federal regulations.

The District's storage and conveyance of untreated sewage wastes identified in the BACKGROUND section of this Notice, and the unpermitted discharge of those wastes as described in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding hazardous waste. [42 U.S.C. § 6972(a)(1)(A)].

The District's operation of its sewage collection system identified in the BACKGROUND section of this Notice has caused contamination of soil, groundwater, surface waters and residential areas with human pathogens, which contamination presents an imminent and substantial endangerment to human health and the environment. The District owns and is responsible for the maintenance of its sewer pipelines which have contributed to the transportation, storage, and disposal of the sewage wastes as described in this Notice. The sewage stored and conveyed by the District's collection system, is a solid or hazardous waste under the RCRA. The District is a past and present transporter, owner and operator of facilities which store said solid wastes in the District's sewer pipelines and pump stations. The District's failure to adequately maintain its collection system has created and is creating an imminent and substantial endangerment to human health or the environment, [42 U.S.C. § 6972(a)(1)(B)].

2. *The Activity Alleged to Constitute a Violation*

To comply with this requirement, River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary, the RCRA requires that the environment and public be protected from solid or hazardous wastes, such as the untreated sewage, including industrial and commercial as well as residential sewage, discharged from the District's sewer pipelines. **Industrial sewage is exfiltrating from structurally damaged pipelines prior to mixing with domestic sewage.** The pollutants found in the discharge of untreated sewage as identified in this Notice constitute solid or hazardous waste under the RCRA, and are required to be managed such that potential and actual harm to the environment and public is eliminated. The RCRA specifically protects groundwater. The liability of the District stems from its ownership and responsibility for operation and maintenance of its sewage collection system.

3. *The discharger responsible for the alleged violation.*

The discharger responsible for the alleged violations is the West Valley Sanitation District, identified throughout this Notice as the "District", and those of its employees responsible for compliance with any applicable law.

4. *The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.*

River Watch has examined records of the Regional Water Quality Control Board ("RWQCB") for the period February 27, 2007 through February 27, 2012. Therefore, the range of dates covered by this Notice is February 27, 2007 through February 27, 2012. River Watch will from time to time update this Notice to include all violations of the RCRA by the District which occur after the range of dates currently covered by this Notice. The violations identified in this Notice such as discharging pollutants to groundwater and surface waters, failure to obtain RCRA-authorized permits, failure to implement the requirements of the RCRA, failure to meet water quality objectives, etc., are continuous. Therefore each day is a violation.

River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in the District's own records (or lack thereof) or files and records of other regulatory agencies including the RWQCB, Bay Area Region.

5. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is Northern California River Watch, a non-profit corporation, organized under the laws of the State of California and located at P.O. Box 817, Sebastopol, CA 95472, telephone 707-824-4372. Northern California River Watch is dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

BACKGROUND

The District provides wastewater collection and disposal services to residential, commercial and industrial customers in the cities of Campbell and Monte Sereno, a portion of Saratoga, the Town of Los Gatos, and the intervening unincorporated areas of Santa Clara County. The District serves approximately 112,000 residents, encompassing a service area of 28 square miles. The wastewater collection system is comprised of approximately 415 miles of sewer main and 200 miles of sewer laterals, for a total of about 615 miles of sewer lines. The District's sewer mains range in diameter from 3 to 39 inches, with nearly 90% of these lines being 8-inches in diameter or smaller. Almost all of the sewer laterals are 4-inches in diameter. The District's oldest sewer lines are approximately 90 years old. The District has ownership and maintenance responsibilities for the lower sewer laterals running from the main line connection to the property line cleanout. Wastewater collected within the District's district flows to the City of San Jose's facilities for treatment and disposal.

The hydraulic model developed by RMC Water and Environment ("RMC,") as part of a Capacity Assessment Study performed under contract to the District, determined the District's entire collection system to be capable of handling the existing Peak Dry Weather Flow, however, some portions of the system were hydraulically deficient under more intensive flow conditions produced by existing and future Peak Wet Weather Flows. A total of 20 hydraulic deficiencies were found in various areas of the system. (SSMP Section VIII-CAPACITY MANAGEMENT).

The District has a history of Sewer System Overflows ("SSOs") from its ageing sewer lines. The largest SSO event reported in 2010 consisted of 2,500 gallons and, according to the Annual Report of SSOs for 2010, "is suspected of being caused by a combination of high inflow and infiltration and a deficiency in the system's hydraulic capacity." (Annual report p.2) These evaluations of the District's collection system are evidence of structural defects which allow inflow and infiltration ("I/I") of rainwater and groundwater into the sewer lines, resulting in a build-up of pressure which causes SSOs. As recorded in the California Integrated Water Quality System ("CIWQS") Interactive SSO Reports, the District's collection system has experienced 166 SSOs with a combined volume of 46,293 gallons between May 2007 and February 2012; 16,240 gallons reaching surface waters. Approximately 79 of these SSOs were from the District's main lines. For example, on January 20, 2010, an SSO of reported volume of 2,500 gallons occurred at Quito Road in Los Gatos, with 1,500 gallons reportedly reaching surface waters. On May 16, 2010 an SSO of reported volume of 1,200 gallons occurred at Bayview Road in Los Gatos, with 400 gallons reportedly reaching surface waters. SSOs caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Los Gatos Creek, Dry Creek and South San Francisco Bay, all waters of the United States.

In addition to surface overflows which discharge overland into surface waters, underground leakages ("exfiltration") caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground, hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, have verified the contamination of the adjacent waters with

untreated sewage.¹ River Watch alleges that such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in the District's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The District's chronic collection system failures pose a substantial threat to public health.

River Watch also alleges that the Discharger regularly underestimates the duration of its SSOs, thereby underestimating and inaccurately reporting the volume of SSOs and the volume which reaches gutters, canals and storm drains which are connected to adjacent surface waters. The Discharger's Sewer Overflow Response Guide, under ESTIMATE SPILL VOLUME, provides the following directions: "Calculate the volume based on 15-minutes prior to the time the WVSD was notified of the spill." There is no reason to believe that the great majority of SSOs are reported to the Discharger within 15 minutes of their start time. Spills occur in out of the way, not readily visible areas, at nighttime. Using this unwarranted assumption as a basis for estimating volume is clearly calculated to err on the side of underestimating spill volume.

Discharges by the District as described herein constitute a nuisance. These discharges are either injurious to health or indecent or offensive to the senses; are an obstruction to the free use of property; and, occur during, or as a result of the storage, transportation or disposal of wastes.

The District's illegal discharge of untreated wastewater is a significant contribution to the degradation of South San Francisco Bay and tributary waters such as Los Gatos Creek, with serious adverse effects on beneficial uses. River Watch members residing in the area have a vital interest in bringing the District's operation of its collection system into compliance with the RCRA.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the District into compliance with the RCRA and to prioritize remedial measures to reflect the biological impacts of the District's ongoing non-compliance:

1. A reduction of collection system I/I through a an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:
 - a. Amendment of the Risk Prioritization Matrix in the Discharger's Sewage System Management Plan ("SSMP") to specify that defective sewer lines located within 150 feet of surface waters, **including gutters, canals and**

¹
See Report of the Human Marker Study issued in July, 2008 and conducted by water quality expert Dr. Michael L. Johnson, U.C. Davis performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

storm drains which are connected to adjacent surface waters, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more 150 feet of surface waters as defined above, taking other factors in the Matrix into consideration;

- b. Amendment of the Risk Prioritization Matrix in the Discharger's SSMP to give residential areas a "moderate" rather than "low" rating in the Impacts to Community element; and,
 - c. The provision of funding in the Discharger's Capitol Improvements Plan (CIP) to CCTV all lower sewer laterals every 10 years, except for lines CCTV'd within the prior 10 years and lines constructed, replaced or repaired within the prior 20 years.
2. A mandatory private sewer lateral inspection and repair program triggered by any of the following events:
- a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer;
 - b. The occurrence of 2 or more SSOs caused by the private sewer lateral within (2 years;
 - c. A change of the use of the structure served (1) from residential to non-residential uses (2) to a non- residential use that will result in a higher flow than the current non- residential use, and (3) non- residential uses where the structure served has been vacant/unoccupied for more than 3 years;
 - d. Upon replacement or repair of any part of the sewer lateral;
 - e. Upon issuance of a building permit with a valuation of \$25,000.00 or more; and,
 - f. Upon significant repair or replacement of the main sewer line or lower lateral to which the lateral is attached.
3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to State waters, including a more detailed account of SSOs and remedial actions, with sufficient information to verify and document SSO start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions including whether any chemical agents were used.
4. Creation of web site capacity to track information regarding sewer system overflows. In the alternative, a link from the Discharger's web site to the State Water Resources Control Board's CIWQS SSO Public Reports. Provision of notification to all

customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

5. Performance of human marker sampling on creeks, rivers, or wetlands adjacent to sewer lines to test for sewage contamination from underground exfiltration.

REGULATORY STANDARDS

Maximum Contaminant Levels and Water Quality Objectives exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent Water Quality Objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply.

The RWQCB has adopted a Water Quality Control Plan or "Basin Plan" which designates all surface and groundwater within the Bay Area regions as capable of supporting domestic water supply. Sewage has been characterized as "hazardous waste" and "solid waste" within the meaning of the RCRA. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of sewage.

Past or current violations of the RCRA authorize the assessment of civil penalties. The enforcement provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for penalties when conditions of hazardous waste disposal have been alleged, as River Watch has alleged in this Notice with respect to the District's sewage collection system. Accordingly, under these provisions, persons or entities violating the RCRA are subject to substantial liability to the United States on a per-day basis.

VIOLATIONS

Between February 27, 2007 and February 27, 2012, ongoing violations of the RCRA at the District's waste collection and disposal system located in Campbell as described herein have occurred. The District has caused or permitted, causes or permits, or threatens to cause or permit hazardous waste to be discharged into waters of the State. These discharges now create or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of such waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharges and threatened discharges are permanently abated.

Disposal, storage and conveyance of sewage wastes by the District in its sewage collection systems between February 27, 2007 and February 27, 2012, has allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California hazardous waste regulatory programs. Although the RCRA is a strict liability statute, the violations of the

RCRA alleged in this Notice are knowing and intentional in that the District in the past has stored and conveyed hazardous substances, in the form of untreated sewage, in pipelines which the District' and/or the District's staff knew to be damaged to the extent that they were unable to contain the sewage and avoid leakage into soil and ground water. The District has known of the contamination of soil and ground water since at least 2007, and has also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to its sewer pipelines, and to continually contaminate and re-contaminate actual and potential sources of drinking water in addition to surface waters.

Violations of the RCRA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

In addition to the violations set forth above, this Notice is intended to cover all violations of the RCRA evidenced by information which becomes available to River Watch after the date of this Notice, and seeks all penalties and other enforcement provisions related to such violations.

CONTACT INFORMATION

River Watch has retained legal counsel with respect to the violations alleged and issues set forth in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
Jerry Bernhaut, Esquire
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Santa Rosa, CA 95402-5469
Tel. 707-528-8175
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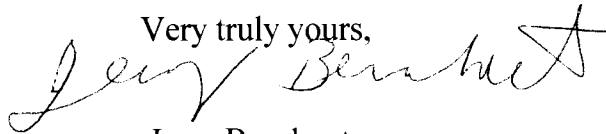
CONCLUSION

The violations as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities and watersheds. Said members use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the District's violations of the RCRA as set forth in this NOTICE.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 90-day notice period or shortly thereafter River Watch intends to file a citizen's suit under the RCRA against the District for the violations identified in this Notice. During the 90-day notice period, however, River Watch is willing to discuss effective remedies for

the violations alleged. If the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested that discussions be initiated soon so that they may be completed before the end of the 90-day notice period.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jerry Bernhaut", with a large, stylized star-like flourish at the end.

Jerry Bernhaut

JB:lhbm

cc:

Northern California River Watch
P.O. Box 817
Sebastopol, CA 95472

Board of Directors
West Valley Sanitation District
100 East Sunnyside Avenue
Campbell, CA 95008

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-100

Executive Director
Calif. Integrated Waste Management Board
1001 "I" Street
Sacramento, CA 95814

EXHIBIT C

Exhibit A

WVSD Sewer Mains
within 250' of Creek



1 inch = 3,000 feet

